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No. 84-1392

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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1984

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KENNETH R. GEORGE and
ALBERTA W. GEORGE - - - - Petitioners

*versus*

LIBERTY NATIONAL BANK & TRUST COMPANY OF LOUISVILLE (f/d/b/a UNITED KENTUCKY BANK, INC.), UNITED KENTUCKY, INC., and DOES 1 through 99 - - - - - Respondents

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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## OPPOSITION BRIEF OF RESPONDENT, LIBERTY NATIONAL BANK AND TRUST COMPANY OF LOUISVILLE

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## COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

Did the federal courts below properly apply the doctrines of collateral estoppel and res judicata, based on a prior state adjudication, to bar consideration of identical claims presented by petitioners in those federal courts?

## LIST OF ALL PARTIES

The petitioners in this matter are Kenneth R. George and Alberta W. George (sometimes hereinafter referred to as "the Georges").

The respondent herein is Liberty National Bank & Trust Company of Louisville (hereinafter referred to as "Liberty"). Liberty is a national bank located in Louisville, Kentucky. Its parent corporation is Liberty United Bancorp, Inc. Liberty has no affiliates, and has no subsidiaries other than wholly-owned subsidiaries.

On December 23, 1982, Liberty acquired and merged with another bank which was its predecessor in interest regarding this matter. This predecessor in interest was United Kentucky Bank, Inc. ("UKB"). The respondent in this matter proceeded in the Kentucky state courts under the name of United Kentucky Bank, Inc. For the sake of consistency with the caption, the name Liberty is used throughout this response, even though the respondent is referred to in the Georges' petition, as well as in the appendices of both petitioners and respondents, as United Kentucky Bank, Inc., or UKB.

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KENNETH R. GEORGE and
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LIBERTY NATIONAL BANK & TRUST COMPANY, OF LOUISVILLE (f/d/b/a UNITED KENTUCKY BANK, INC.), UNITED KENTUCKY, INC., and DOES 1 through 99 - *Respondents*

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**On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit**

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## OPPOSITION BRIEF OF RESPONDENT, LIBERTY NATIONAL BANK AND TRUST COMPANY OF LOUISVILLE

---

Respondent Liberty National Bank and Trust Company of Louisville respectfully submits this brief in opposition to the Petition for Writ of Certiorari filed by petitioners, Kenneth R. George and Alberta W. George, to review the decision of the United States Court of Appeals for the Sixth Circuit affirming the District Court's dismissal of the Georges' complaint.

### COUNTERSTATEMENT CONCERNING JURISDICTION

Liberty respectively suggests that, although this Court has discretion to review cases under 28 U.S.C. §1254(1) other than those specifically described in

Supreme Court Rule 17.1, certiorari in this case should be denied for failure to meet any of the standards of said Rule 17.1 or any other standard by which a case is deemed worthy of Supreme Court review.

The Georges claim in their petition three grounds under Rule 17.1: (1) a conflict between federal circuit courts of appeals on a single issue, (2) a conflict between the Sixth Circuit Court of Appeals and the Kentucky Supreme Court on a federal question, and (3) a conflict between the Sixth Circuit Court of Appeals and this Court regarding a federal question. However, the petition cites no grounds whatsoever to support the existence of these conflicts, primarily because for the Georges' purposes there are none.

Rather, the petition seeks to divert attention from the binding effect of numerous prior decisions in favor of Liberty by inviting this Court to ignore Mr. Justice Holmes' admonition that "[w]e do not grant certiorari to review evidence and discuss specific facts." *United States* v. *Johnson*, 268 U. S. 220, 227 (1925).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

For the reasons previously stated in Liberty's jurisdictional statement, there are no federal constitutional provisions, statutes, treaties or regulations involved in this case for purposes of Certiorari.

## COUNTERSTATEMENT OF THE CASE

The Georges' petition for a writ of certiorari to the Sixth Circuit is based on the outcome of two separate but duplicative cases, one in the state courts of Ken-

tucky, and one in the federal courts of the Sixth Circuit. The first judgment (almost entirely in Liberty's favor) was rendered in the Circuit Court of Jefferson County, Kentucky in late 1982. Since then, that judgment has run the full course of appellate review in the Kentucky courts. Similarly, the dismissal of the federal court case, which was based on the preclusive effect of the state court judgment, has run the full course of appellate review in the federal system, except for this Court.

Presented below is a narrative of the proceedings in the Kentucky court, followed by a narrative of the proceedings in the federal court. Also attached as Appendix A is a chronological chart of significant events as they occurred in both courts.

**I. Proceedings and Disposition in the Kentucky Courts.**

The state court proceedings started in the Jefferson County Circuit Court on October 27, 1981, when Liberty filed its complaint against the Georges. This state court suit was an action to collect in excess of $2,000,000 loaned to the Georges by Liberty, and to foreclose on collateral securing such sum. The debt was evidenced by a number of promissory notes and secured by various real estate mortgages and other collateral.

On January 11, 1982, the Georges filed this action against Liberty in the U.S. District Court for the Western District of Kentucky, and also filed a petition for removal which removed the Jefferson Circuit Court proceedings to the same U.S. District Court. The

Georges then filed a perfunctory answer in the federal court action commenced by the removal. The U.S. District Court promptly remanded the state court proceeding to the Jefferson Circuit Court, there being no jurisdictional basis for removal (i.e., incomplete diversity and no federal question).

Now back in state court, the Georges filed a "supplemental answer" on March 1, 1982. The state court answer expressly incorporated all allegations of the January 11, 1982 complaint which initiated this separate federal court action against Liberty.

The supplemental answer raised the defenses which were litigated in the state court by the Georges and Liberty. These defenses primarily challenged the validity of Liberty's prime rate lending practices. The supplemental answer accused Liberty of breach of contract, breach of fiduciary duty, and fraud (including mail fraud as a predicate to a RICO action) based on allegations that the Georges were charged Liberty's published prime interest rate at the same time other borrowers were allowed to borrow money from Liberty with interest based on a lower prime rate. In addition, the Georges claimed that Liberty's prime interest rate was illusory, since Liberty had discretion to move it up or down, and therefore unenforceable.

The Georges' supplemental answer also challenged Liberty's use of the 365/360 method of calculating interest as a breach of contract, breach of fiduciary duty, and fraud.

After the filing of the supplemental answer on March 1, 1982, the state court case entered a period

during which both sides took extensive discovery, including interrogatories, requests for production of documents, and depositions. The discovery was by agreement to be used in either the state or federal case.

On August 20, 1982, Liberty filed in the state court an extensive motion for summary judgment. The trial court heard arguments of counsel regarding the summary judgment on *two* occasions — October 11, 1982 and October 21, 1982.

Summary judgment for Liberty was entered on October 25, 1982. The judgment held that the promissory notes were valid and collectible with interest calculated according to Liberty's published prime rate. The judgment held for the Georges only on the limited issues of the 365/360 method of interest calculation, stating that interest should have been calculated on a 365/365 basis, and therefore, the Georges were entitled to an interest credit.

On November 4, 1982, the Georges filed in the trial court a motion to alter, amend or vacate the summary judgment, which motion was overruled in May 1983. The motion was held in abeyance for approximately six months due to the Georges' having filed bankruptcy in Tampa, Florida.

The Georges then appealed to the Kentucky Court of Appeals. That court issued an opinion on February 24, 1984. The case was reversed and remanded on the limited issue of the manner in which the interest credit was calculated. All other aspects of the summary judgment were fully affirmed.

Subsequently, the Georges filed two more requests for review in the Kentucky appellate courts. The first was a petition for a rehearing filed in the Kentucky Court of Appeals. On July 18, 1984, after the petition for rehearing was denied, the Georges then filed a motion for discretionary review in the Kentucky Supreme Court. Finally, the Kentucky Supreme Court entered an order on November 8, 1984, denying the Georges' motion for discretionary review, and the Georges' state court remedies were thus exhausted.

**II. Proceedings and Disposition in the Federal Courts.**

On January 11, 1982, after filing of the state court action, the Georges filed the complaint in the instant case in the U. S. District Court for the Western District of Kentucky, alleging breach of contract, breach of fiduciary duty, fraud, and RICO/mail fraud claims. No further significant action occurred in this case until June 22, 1982, when the Georges filed their "first amended complaint," which by its terms was only to "restate and clarify" the original complaint.

Again, little action occurred in the District Court case until mid-1983. On June 13, 1983, Liberty filed its motion to dismiss the complaint on the grounds of res judicata and collateral estoppel based on the state court judgment. The dismissal was granted September 30, 1983, subject to the case's being reopened if the summary judgment was overturned by a Kentucky appellate court. Shortly thereafter, the Georges appealed to the U. S. Court of Appeals for the Sixth Circuit.

While the Kentucky state court appeals were in process, the issues were fully briefed by both parties in the Sixth Circuit. That court then postponed its decision until after the Kentucky Supreme Court denied the Georges' petition for discretionary review of the Kentucky Court of Appeal's affirmance of the judgment. On January 22, 1985, the Sixth Circuit affirmed the District Court's dismissal on the basis of res judicata and collateral estoppel established by the state court summary judgment, with one exception: the issue of fraudulent inducement (as opposed to fraud in performance) with respect to the RICO claim was held not to have been actually litigated in the Kentucky courts, and so not precluded by res judicata (because of exclusive federal jurisdiction) or collateral estoppel. That single issue was remanded to the District Court for trial.[1] In all other respects, the dismissal was upheld.

## REASONS FOR DENYING THE PETTTION

Although in this last effort to avoid the state court judgment, the Georges have attempted to set up a procedural due process claim, the only issues actually involved in this case are the proper applications of the doctrines of res judicata and collateral estoppel.

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[1]Nothing herein should be construed as an admission by Liberty that the Sixth Circuit was correct in remanding that single issue. Any objection to that holding by Liberty is simply not relevant to the Georges' petition for certiorari. Liberty respectfully suggests that the Sixth Circuit should have affirmed the District Court's dismissal in total.

These questions of law have already been adjudicated and reviewed in five separate courts. The federal courts below found that (with one exception) the claims in the Georges' complaint were precisely those presented and adjudicated as defenses in the Kentucky state court proceedings, and were therefore barred from further litigation by the principles of res judicata and collateral estoppel. Accordingly, the District Court dismissed the Georges' complaint, and the Sixth Circuit affirmed. Both of these decisions rely on the *specific findings* of the Jefferson County Circuit Court that Liberty properly set and charged its prime rate and possessed *no fraudulent intent* with respect to Liberty's loan transactions with the Georges. The subsidiary issues of breach of contract and breach of fiduciary duty were also decided almost entirely in Liberty's favor. The federal courts' decisions that the state court judgment was preclusive are amply supported by the undisputed facts, as well as by decisions of the Kentucky appellate courts. Try as it may, the Georges' petition raises no material federal question, establishes no conflict among higher federal courts or state courts, and presents no other issue worthy of Supreme Court review.

## I. The Petition Presents No Important Issue of Federal Law.

The Georges' entire petition is fatally devoid of any support for their claims under Supreme Court Rule 17.1(a) and (c). Rather, the petition addresses the factual aspects of the case, and the correctness of the

lower court's decisions, issues which without more are not appropriate for a grant of certiorari by this Court.

### A. The Petition Raises No Important Question of Substantive Federal Law.

The only substantive issue of federal law presented in the instant case is a claim by the Georges that Liberty committed numerous acts of mail fraud (28 U.S.C. §1341) and, therefore, also committed a violation of the Racketeer Influenced and Corrupt Organizations Act (28 U.S.C. §1961). The state court summary judgment held that, as a finding of fact, an essential element of both common law and mail fraud (specific intent to defraud) was clearly not present in the case, and, therefore, neither the mail fraud nor the RICO claims could be sustained as a matter of law. That decision was upheld throughout all of the state court proceedings.

In reviewing the findings in the state court, the U. S. District Court determined that the Georges' mail fraud/RICO claim was exclusively within federal jurisdiction, and therefore the state decision could not preclude that claim on the basis of res judicata. However, turning to the state court's specific findings of fact, the District Court also found that the absence of an essential factual element of the exclusively federal claim, i.e., fraudulent intent, had already been properly adjudicated. Accordingly the District Court dismissed that claim on grounds of collateral estoppel, and the Sixth Circuit affirmed.

In view of the foregoing, the only possible substantive element of the Georges' federal claims put in issue by the petition is whether or not the specific intent required for the state as opposed to the federal fraud claims is the same. Yet the Georges' petition is totally devoid of any authority even suggesting that the intent requirements are not the same for both. In short, such issue is hardly a burning question ripe for Supreme Court review.

### B. The Petition Raises No Important Issue of Federal Procedure.

Several of the "questions presented" by the Georges' petition claim a denial of procedural due process under Amendments Five and Fourteen of the United States Constitution and a violation of the Supremacy Clause of Article VI of the Constitution. However, these issues were not specifically raised in any of the state courts nor the lower federal courts, as an examination of the briefs submitted and the opinions rendered in those courts will demonstrate. Therefore, constitutional claims such as these cannot properly be raised in this Court for the first time. (See, e.g., *United States* v. *Ortiz,* 422 U. S. 891, 898 (1975).

In any event, as the history of this case demonstrates, not only have the Georges received due process, they have received *undue* process! (Besides the state and federal civil court actions discussed herein, the debt of the Georges to Liberty has been substantially litigated in the U. S. Bankruptcy Courts.)

## II. The Petition Presents No Conflict Among Any of the State Courts, Federal Courts of Appeals, or This Court With Respect to the Issues Raised by the Petition.

After substantial review and analysis of the Georges' petition, which is less than a model of clarity, it appears that their six questions presented can be rearranged to a reasonably understandable grouping of issues as follows:

1. As to collateral estoppel based on state court findings:
   a. Can it be used to preclude an exclusively federal claim (i.e., mail fraud/RICO? (Petition Question 4)
   b. Can it be based on a summary judgment? (Petition Question 1)
   c. Can it be used to preclude the issue of fraudulent intent where the state court dealt with common law fraud and the federal court dealt with statutory mail fraud? (Petition Question 3)
2. As to res judicata based on a state court judgment:
   a. Would the judgment have been preclusive under state law? (Petition Question 2)
   b. Was it not preclusive because the federal court allegedly had exclusive jurisdiction over the pendent state law claims? (Petition Question 5)
3. As to preclusion in general based on a state court case:
   a. Were the Georges deprived of an allegedly absolute right to litigate all issues in federal court? (Petition Question 6)

All parties are in agreement that the full faith and credit provisions of 28 U.S.C. §1738 require a federal court to give due credit to prior state judgments. As to each of the foregoing issues, the Georges' petition has demonstrated not a single relevant conflict between the Sixth Circuit and this Court, or the Kentucky Supreme Court, or any other federal Circuit Court of Appeals, and therefore presents on that ground no justification for a grant of certiorari in this case. The following discussion explains in greater detail the insufficiency of the petition for purposes of certiorari.

**A. The Federal Courts Below Correctly Decided Those Collateral Estoppel Issues Presented in the Petition. (Issues 1(a), (b), and (c) above.)**

It is well settled law that exclusive federal jurisdiction does not preclude the use of collateral estoppel where the same facts and issues have previously been decided, whether in state or federal court. *County of Cook* v. *Midcon Corp.*, 574 F. Supp. 902, 913 (N.D. Ill. 1983), citing *Becher* v. *Contoure Laboratories, Inc.*, 279 U. S. 388 (1929). Accord, *Cream Top Creamery* v. *Dean Milk Company*, 383 F. 2d 358 (6th Cir. 1967).

Furthermore, it is clear that collateral estoppel may be based on a summary judgment without a violation of procedural due process. There is no question that a summary judgment itself complies with procedural due process when properly supported, and also that a summary judgment is equivalent to a judgment on the merits. *Mayer* v. *Distel Tool & Machine Co.*, 556 F. 2d 798 (6th Cir. 1977). Therefore, the only question is

whether the issue of fraudulent intent was actually litigated in the Jefferson County Circuit Court.

Due process requires no specific form of procedure; it is intended to be a flexible concept. *Kremer* v. *Chemical Construction Corp.*, 456 U. S. 461 (1982). All that is required is a "full and fair opportunity" to litigate the issues in question. *Allen* v. *McCurry*, 449 U. S. 90, (1980). An issue is "actually litigated and decided when it is properly placed in dispute and is resolved by the trier of fact." *Cook, supra,* at 914. In addition, collateral estoppel requires that in the prior proceeding, the decision was supported by specific findings of facts. *Cream Top Creamery, supra.*

The Georges have asserted a totally insupportable if novel theory to the effect that although the summary judgment granted relief to Liberty on its claims, the summary judgment was not in any way an adjudication of the defenses presented by the Georges. Nothing could be further from the truth. The Jefferson County Circuit Court, following Ky. R. Civ. P. 56 (which, in effect, is the same as Fed. R. Civ. P. 56) could not have granted complete relief to Liberty without taking into consideration the defenses raised by the Georges, which expressly included all of the elements of their complaint filed in federal court.

The general rule in Kentucky is that once a prima facie case for summary judgment has been established, the burden of moving forward shifts to the opponent, who must show sufficient evidence to prove (1) that some issue of material fact exists, *and* (2) that such issue supports at least one plausible legal theory. (See

e.g., *Neal* v. *Welker*, 426 S. W. 2d 476 (Ky. 1968).) The burden of proof on the Georges' behalf was minimal, and yet they failed to sustain it.

In this case, the summary judgment was rendered just short of one year after the Georges filed their complaint. During that period, many pleadings, motions, and briefs were filed, a wealth of discovery was taken, and numerous hearings were held (including two hearings on the summary judgment). The issue of whether Liberty acted with fraudulent intent was squarely placed in issue by the Georges' filing of their supplemental answer, which included all of the claims in their federal court action.

In addition, Judge Revell of the Jefferson County Circuit Court wrote a detailed opinion including specific findings of fact and law on the issue of fraudulent intent. Similarly, the District Court made a thorough review and set forth detailed conclusions and rationales in its opinion. In short, all of the procedures involved in arriving at the summary judgment, and in dismissing the Georges' federal case on the basis of that judgment, were proper, and the Georges' petition cites no relevant authority to the contrary.

Finally, the Georges' contention that the summary judgment did not litigate the elements of fraud required to prove mail fraud under 18 U.S.C. §1341 is equally unfounded. Both actions require specific intent to defraud. (See, e.g. *United States* v. *Kreimer*, 609 F. 2d 126, 128 (5th Cir. 1980).) The Georges' petition presents no evidence or authority for the proposition that the "fraudulent intent" of each cause of

action is not exactly the same; all of the cases cited by them deal with differences in *conduct* required for each type of fraud, but show no variance regarding *intent*. The federal courts below acquired a perfectly appropriate basis for the use of res judicata and collateral estoppel from the results of the state court litigation between the Georges and Liberty, and the Georges have cited no decision of the Kentucky Supreme Court, another Circuit Court of Appeals, or this Court which holds otherwise.

**B. The Federal Courts Below Correctly Decided Those Res Judicata Issues Presented by the Petition (Issues 2(a) and (b) above).**

The Georges' petition challenges the application of res judicata to justify the District Court's dismissal on two grounds: that res judicata would not have applied in another Kentucky court under Kentucky law, and that the District Court had exclusive jurisdiction over the state claims appended to their RICO/mail fraud claims. Again, these arguments are without support.

The Georges' claim that the state court's summary judgment would not have been held res judicata by other Kentucky courts has no support. The Georges admit that Kentucky law on this issue was controlling in the District Court, and that the authoritative case is *Newman* v. *Newman*, 451 S. W. 2d 417 (Ky. 1970). Then they proceed to substantially misconstrue that case.

The rule in Kentucky is that res judicata covers "every point which properly belonged to the subject

of litigation." *Newman, supra,* p. 419. The foregoing statement is not just dictum; it is an essential statement of the law necessary to support the decision of the *Newman* court, which held that res judicata was not applicable on the facts in that case. Of course, on its facts alone, *Newman* is easily distinguishable from this case. In *Newman,* the causes of action were not the same, the second cause of action had not even arisen at the time of the first suit, and the second suit was based on numerous facts which would not have been germane to the first proceeding. Clearly that is not the case between Liberty and the Georges. Therefore, the general rule cited above would govern this issue in another Kentucky court. The Georges have never disputed the fact that the claims asserted in the federal court action arose out of the *very same transactions* as those involved in the state court action. In fact, the Georges placed those same issues before the state court by the incorporation of their federal complaint in their state court supplemental answer. The state court necessarily reached those claims in its decision, and flatly rejected them. Once that decision was rendered, it stood as res judicata to bar further litigation of those claims in the federal court.

The other claim of the Georges to bar the use of the state court judgment as res judicata is that the federal court had exclusive jurisdiction over the pendent state claims. The Georges cite no relevant authority for this proposition because it is patently untrue. Even as to federal questions arising under federal statutes, there is a *presumption* that the jurisdiction of federal and

state courts is *concurrent*. *Gulf Offshore Co.* v. *Mobil Oil Corp.*, 453 U. S. 473 (1981). *A fortiori*, concurrent jurisdiction obviously applies to claims arising under state law. *Will* v. *Calvert Fire Insurance Company*, 437 U. S. 655 (1978). There is a substantial difference, which the Georges fail to discern, between the *discretion* of the federal court to hear state claims, and an *obligation* to do so. The cases cited by the Georges deal only with discretionary jurisdiction over pendent state claims.

**C. Petitioners' Claim of a Lack of Procedural Due Process Based on a Purported Absolute Right to Litigate in Federal Court Is Totally Without Merit.**

The Georges have substantially misconstrued the scope of jurisdiction of the federal courts. Contrary to their contentions, no one has an absolute right to litigate in federal court except in those few instances where federal jurisdiction is exclusive (*Allen* v. *McCurry*, 449 U. S. 90 (1980)), pursuant to a federal statute which expressly grants exclusive jurisdiction. Furthermore, even where exclusive federal jurisdiction attaches, certain claims may still be barred by res judicata or collateral estoppel. *Nash Cty. Bd. of Ed* v. *Biltmore Co.*, 640 F. 2d 484 (4th Cir.), *cert. denied*, 454 U. S. 878 (1981). In the vast majority of cases (particularly where the statute is silent like RICO), the federal and state courts have concurrent jurisdiction.

It was the Georges' decision to move forward with the state case rather than actively prosecute the federal court case; they cannot now be heard to complain when

they have had far more than one "full and fair" opportunity" to litigate the issues in this case, and, if the Sixth Circuit decision is fully affirmed, will have yet another day in federal district court. Again, their petition fails to demonstrate any significant conflict on this issue among the higher courts of the state and federal systems.

## CONCLUSION

It must be re-emphasized that throughout the case, the Georges never attempted to have the Kentucky proceedings stayed during the pendency of the federal court action, to object to the jurisdiction of the state court, or to consolidate the two cases. They actively prosecuted the state case while essentially ignoring the federal case in which practically no action was taken until after the summary judgment in the Jefferson Circuit Court was rendered. Only then did the Georges suddenly decide they should have a second opportunity to litigate in federal court. Without question, the Georges have had full consideration of their claims in the appellate courts of Kentucky, both intermediate and supreme, as well as the lower federal courts. Therefore, that second opportunity to litigate identical issues was properly denied by the District Court and the Sixth Circuit, with all due process.

There is no reason of the type described in United States Supreme Court Rule 17.1 for this Court to grant review on certiorari, nor are any other issues raised by the Georges which qualify as worthy of certiorari. For the reasons discussed herein, Liberty National

Bank & Trust Company of Louisville respectfully requests that this Court deny the Georges' petition for a writ of certiorari.

Respectfully submitted,

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# APPENDIX

## APPENDIX A

## STATE AND FEDERAL COURT PROCEEDINGS

| CASE | DATE | EVENT |
|---|---|---|
| State | 10/27/81 | Liberty filed a complaint in Jefferson County Circuit Court, Case No. 81-CI-09925, for collection of notes and foreclosure on collateral including real and personal property and guaranties. |
| Federal | 1/11/82 | The Georges filed their complaint in the Federal District Court, alleging fraud, breach of contract, breach of fiduciary duty, and RICO violations by mail fraud. |
| State | 1/11/82 | The Georges filed their petition for removal of the state action to federal court. |
| State | 1/13/82 | The Georges filed a perfunctory answer in the removed state case. |
| State | 2/23/82 | The removed case was remanded to state court for lack of subject matter jurisdiction (incomplete diversity and no federal question). |
| State | 3/ 1/82 | The Georges filed a "Supplemental Answer" in state court incorporating their January 11 federal court complaint as a defense in the state court action. |
| State | 6/ 4/82 | A default judgment was entered in the State court proceeding against the Georges as a sanction for failure to obey the court's orders concerning discovery. |

| CASE | DATE | EVENT |
|---|---|---|
| Federal | 6/22/82 | The Georges filed their first amended complaint in the federal court, which by its terms merely "restates and clarifies" the original complaint. |
| State | 7/15/82 | The default judgment in the state court action was set aside. |
| State | 8/20/82 | Liberty filed its motion for summary judgment in the state court. |
| State | 10/11/82 | First hearing on summary judgment. |
| State | 10/21/82 | Second hearing on summary judgment. |
| Federal | 10/21/82 | The Georges offered an amendment to their complaint to include a claim of fraudulent inducement. The amendment was not permitted to be filed, due to the Georges having promised no further alterations of the complaint as partial consideration for having the default judgment set aside. |
| State | 10/25/82 | SUMMARY JUDGMENT for Liberty was entered in the state court. |
| State | 11/ 4/82 | The Georges filed a motion to alter, amend, or vacate the summary judgment, which was shortly thereafter denied. |
| State | 11/25/82 | The Georges filed a motion of appeal of the summary judgment. |
| Federal | 6/13/83 | Liberty filed its motion to dismiss in federal court on the grounds of *res judicata* and collateral estoppel. |
| Federal | 9/30/83 | DISMISSAL was granted to Liberty. |

| CASE | DATE | EVENT |
|---|---|---|
| Federal | 10/12/83 | The Georges filed a notice of appeal of the dismissal. |
| State | 2/ 2/84 | THE KENTUCKY COURT OF APPEALS AFFIRMED the Jefferson Circuit Court's summary judgment. |
| State | 3/14/84 | The Georges filed a petition for rehearing in the Kentucky Court of Appeals, which was subsequently denied. |
| State | 7/18/84 | The Georges filed a motion for discretionary review by the Kentucky Supreme Court. |
| State | 11/ 8/84 | DISCRETIONARY REVIEW BY THE KENTUCKY SUPREME COURT WAS DENIED. |
| Federal | 1/22/85 | THE SIXTH CIRCUIT AFFIRMED the District Court's dismissal except for the fraudulent inducement claim re RICO. |
| Federal | 2/ 4/85 | Liberty filed a petition for rehearing in the Sixth Circuit Court. |
| Federal | 2/21/85 | Liberty's petition for rehearing was denied. |
| State | 2/ 4/85 | The Georges filed for certiorari in the U. S. Supreme Court regarding the Kentucky Supreme Court decision. |
| Federal | 2/22/85 | The Georges filed for certiorari in the U. S. Supreme Court regarding the Sixth Circuit decision. |